Allied Production Workers Union Local 12 (Northern Engraving Corporation) *and* Sherry Prichard. Case 18–CB–3913

April 28, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon charges filed by Sherry Prichard on April 19 and June 21, 1999, against Allied Production Workers Union Local 12 (the Respondent or the Union), the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 23, 1999. The complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by continuing to enforce a checkoff authorization signed by Prichard and other employees despite their attempted revocation of those authorizations on January 30, 1998.

On September 23, 1999, the General Counsel, the Respondent, and the Charging Party filed with the Board a joint motion to transfer this proceeding to the Board and for approval of the parties' stipulation of facts. The parties agreed that the stipulation of facts and attached exhibits constituted the entire record in this case, that no oral testimony was necessary or desired by any of the parties, and that they waived a hearing and decision by an administrative law judge. On November 10, 1999, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a Decision and Order. Thereafter, the General Counsel and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Northern Engraving Corporation (Northern Engraving), a Wisconsin corporation with a principal office in Sparta, Wisconsin, has been engaged in the manufacture and distribution of appliance nameplates at its facility in Lansing, Iowa. During the calendar year ending December 31, 1998, Northern Engraving sold goods and services valued in excess of $50,000 directly to customers located outside of the State of Iowa and purchased and received at its Lansing facility goods valued in excess of $50,000 from points outside the State.

We find that Northern Engraving is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The stipulated record reflects that at all material times the Respondent has been the exclusive collective-bargaining representative of the employees in the following unit:

> All production and maintenance employees at the plant located at Industrial Park West, Lansing, Iowa; excluding all salaried, office, clerical employees, designers, artists, graphic arts personnel, tool and die makers, laboratory technicians, plant protection employees, and technical, professional and supervisory employees as defined under the National Labor Relations Act of 1947 as amended.

The parties' collective-bargaining agreement covering the unit contained a dues-checkoff provision[1] which required Northern Engraving to deduct and remit dues and service fees monthly to the Respondent pursuant to a lawfully executed authorization signed by the employee.[2]

On June 19, 1993, Sherry Prichard executed a checkoff or service charge authorization form that stated, in relevant part:

> I hereby authorize and direct my employer to deduct from my wages a service charge equal in amount to the dues which members are obligated to pay this Union, and to pay the same to this Union or its designee pursuant to the provisions of any current or future collective bargaining agreement. I also authorize and direct my employer to deduct from my wages any amount that is or shall become due from me for health and welfare coverage under the Central States Joint Board Health and Welfare Fund. Said deduction shall be monthly in the first week of each month. This authorization and direction shall be irrevocable for the period of one year from the date hereof, or until the termination of the contract between the Company and the Union, whichever occurs first.
>
> This authorization and direction shall automatically renew itself for successive yearly or applicable contract

[1] Art. IX of the parties' collective-bargaining agreement, effective July 27, 1995, through September 29, 1998, provides:

> *Section 9.1. Checkoff.* Upon receipt of a lawfully executed written authorization from an employee, the Company agrees to deduct the regular Union membership dues of such employee from the employee's pay monthly and to remit such deduction by the tenth (10th) day of the month following deduction to the official designated by the Union in writing to receive such deductions. The Union will notify the Company in writing of the exact amount of such regular membership dues to be deducted. The Union will refund to the Company or the employee any dues which may erroneously be deducted or any moneys which may erroneously be remitted to the Union. The successor agreement, effective from March 30, 1999 through March 29, 2002, contained the same language with the words "or service fees" inserted in the first sentence after the phrase "regular Union membership dues."

[2] Neither collective-bargaining agreement referenced in fn. 1, above, contains a union-security clause.

> periods thereafter, whichever occurs first, unless I give written notice to the Company and the Union at least sixty days, and not more than seventy-five days, before any annual renewal date of this authorization and direction of my desire to revoke same. My Employer is further authorized and directed to turn over the said monies as they become due to the proper officer of the Local Union.

On January 30, 1998, Prichard, and other employees who had signed identical authorizations,[3] sent a handwritten letter to Northern Engraving which read:

> As of January 30, 1998, we have chosen to quit the AFL–CIO Local 12 Union.
>
> Please stop taking union dues out as of this date Jan. 30, 1998.

The Union's local president, Edmee Lopez, responded by letter dated February 19, 1998, in which she acknowledged the resignations from the Union but continued:

> [W]e must inform you that as a non-member, you are still obligated to pay a service fee in the amount of *$14.77* per month. [Emphasis in original.]
>
> Under the check-off authorization that you signed, you authorized the Company to deduct a service fee in an amount equal to Union dues. The service fee for Local #10 [sic] is currently *$14.77* per month. [Emphasis in original.] The service fee will continue until your check-off is properly revoked.

Thereafter, the Respondent continued to receive service fees withheld from the employees' wages pursuant to their checkoff authorizations. The record does not contain any other correspondence between the employees and the Respondent after February 19, 1998.

B. The Pleadings

On April 19, 1999, Prichard filed a charge in this case on behalf of herself and others alleging that the Union violated Section 8(b)(1)(A) by improperly receiving service fees after the employees resigned their union memberships. Thereafter, on June 21, 1999, Prichard amended her charge to allege that the Respondent has violated Section 8(b)(2) by causing Northern Engraving to continue to withhold service fees pursuant to the checkoff authorizations after the employees had resigned from the Union. The General Counsel issued a complaint on these charges on June 23, 1999.

The complaint alleges that, during the 6 months preceding the filing of the charge, the Respondent has refused to give effect to the resignations of Prichard and the other employees by continuing to receive, accept, and retain moneys withheld from their wages pursuant to their authorizations, in violation of Section 8(b)(1)(A). The complaint further alleges that, during the 6 months preceding the filing of the charge, the Respondent has caused Northern Engraving to discriminate against Prichard and the other employees by withholding service charges from the employees' wages after they had resigned from the Union, in violation of Section 8(b)(2). The complaint makes no reference to misconduct following the date of the charge.

The Respondent admits it continued to accept withheld service fees from the employees but denies that its actions violated the Act. In addition, the Respondent interposes an affirmative defense that the Charging Party's charges are untimely under Section 10(b).[4] We find merit in the Respondent's affirmative defense.

III. DISCUSSION

Section 10(b) of the Act precludes the issuance of a complaint "based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon" the charged party.[5] Although the General Counsel may rely on evidence outside the 10(b) period as "background," he is barred from bringing any complaint in which the operative events establishing the violation occurred more than 6 months before the unfair labor practice charge has been filed and served.[6]

As the Supreme Court stated in *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 419 (1960), the fundamental policies underlying Section 10(b) "are to bar litigation over 'past events after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, and of course to stabilize existing bargaining relationships." (Footnote omitted.) The Board has stated that the Court's decision and the legislative history it cited require "strict adherence" to the 10(b) limitations period. See *A&L Underground*, 302 NLRB 467, 468 (1991); and *Chambersburg County Market*, 293 NLRB 654 (1989). The 10(b) period commences, however, only when a party has clear and unequivocal notice of a violation of the Act. See *Desks, Inc.*, 295 NLRB 1 (1989); and *Teamsters Local 43 v. NLRB*, 825 F.2d 608, 616 (1st Cir. 1997); *ACF Industries,* 234 NLRB 1063 (1978), enfd. as modified 596 F.2d 1334, 1351–1352 (8th Cir. 1979). The burden of showing that a charging party was on clear and unequivocal notice of the violation rests with the respondent. *A&L Underground*, supra at 469.

In the instant case, Prichard notified Northern Engraving of her resignation from the Union and attempted to revoke her checkoff authorization on January 30, 1998.

[3] The record shows that Dave Prichard signed an authorization on June 19, 1993, and that Roy McKee signed on June 6, 1994.

[4] The General Counsel did not present any arguments in its brief challenging the Respondent's affirmative defense.

[5] 29 U.S.C. 160(b).

[6] See *Chemung Contracting Corp*., 291 NLRB 773, 774 (1988); and *American Commercial Lines*, 291 NLRB 1066, 1081 (1988).

Within a month, on February 19, 1998, Prichard received a letter from the Union that clearly and unequivocally informed her that the Union intended to continue to enforce the authorization and collect the service fees unless and until she submitted a "proper" revocation.[7] As observed above, the record discloses no further communication between the Charging Party and the Union.

On Prichard's receipt of the Respondent's February 1998 letter, the dispute was clearly drawn.[8] Nevertheless, Prichard did not file her original charge in this case until 14 months later, April 19, 1999, well outside the 10(b) limitations period. The record does not contain any other request for revocation of checkoff within the 10(b) period.[9] Under these circumstances, we find that Prichard's charge was untimely, and we shall dismiss the complaint.

ORDER

The complaint is dismissed.

[7] Presumably a "proper" revocation, according to the Union, would be one that was given to the Company and Union in writing "at least sixty days, and not more than seventy-five days" before the annual renewal date of the authorization. The record does not indicate that any of the employees requested revocation of their dues-checkoff authorization during the 60–75 day period prior to the expiration of the 1995–1998 collective-bargaining agreement.

[8] There can be no dispute that the Union's February 19, 1998 letter clearly and unequivocally rejected Prichard's attempted revocation. Indeed, even if an ambiguity can be read into the letter, the fact that Northern Engraving continued to withhold, and the Union continued to receive, service fees from Prichard's wages for each of 14 months thereafter necessarily would serve to dispel any uncertainty as to the Union's intentions.

[9] In the absence of any complaint allegation of misconduct involving the period following the filing of the charges, we need not address the Respondent's rights and obligations during that ensuing time period.